

**Superseded 5/12/2015**

**31A-37-306 Conversion or merger.**

- (1) An association captive insurance company or industrial insured group formed as a stock or mutual corporation may be:
  - (a) converted to a reciprocal insurer in accordance with a plan and this section; or
  - (b) merged with and into a reciprocal insurer in accordance with a plan and this section.
- (2) A plan for a conversion or merger under this section:
  - (a) shall be fair and equitable to:
    - (i) the shareholders, in the case of a stock insurer; or
    - (ii) the policyholders, in the case of a mutual insurer; and
  - (b) shall provide for the purchase of:
    - (i) the shares of any nonconsenting shareholder of a stock insurer in substantially the same manner and subject to the same rights and conditions as are provided a dissenting shareholder; or
    - (ii) the policyholder interest of any nonconsenting policyholder of a mutual insurer in substantially the same manner and subject to the same rights and conditions as are provided a dissenting policyholder.
- (3) In the case of a conversion authorized under Subsection (1):
  - (a) the conversion shall be accomplished under a reasonable plan and procedure that are approved by the commissioner;
  - (b) the commissioner may not approve the plan of conversion under this section unless the plan:
    - (i) satisfies Subsections (2) and (6);
    - (ii) provides for the conversion of existing stockholder or policyholder interests into subscriber interests in the resulting reciprocal insurer, proportionate to stockholder or policyholder interests in the stock or mutual insurer; and
    - (iii) is approved:
      - (A) in the case of a stock insurer, by a majority of the shares entitled to vote represented in person or by proxy at a duly called regular or special meeting at which a quorum is present; or
      - (B) in the case of a mutual insurer, by a majority of the voting interests of policyholders represented in person or by proxy at a duly called regular or special meeting at which a quorum is present;
  - (c) the commissioner shall approve a plan of conversion if the commissioner finds that the conversion will promote the general good of the state in conformity with the standards under Subsection 31A-37-301(4);
  - (d) if the commissioner approves a plan of conversion, the commissioner shall amend the converting insurer's certificate of authority to reflect conversion to a reciprocal insurer and issue the amended certificate of authority to the company's attorney-in-fact;
  - (e) upon issuance of an amended certificate of authority of a reciprocal insurer by the commissioner, the conversion is effective; and
  - (f) upon the effectiveness of the conversion:
    - (i) the corporate existence of the converting insurer shall cease; and
    - (ii) the resulting reciprocal insurer shall notify the Division of Corporations and Commercial Code of the conversion.
- (4) A merger authorized under Subsection (1) shall be accomplished substantially in accordance with the procedures set forth in this title except that, solely for purposes of the merger:
  - (a) the plan or merger shall satisfy Subsection (2);

- (b) the subscribers' advisory committee of a reciprocal insurer shall be equivalent to the board of directors of a stock or mutual insurance company;
  - (c) the subscribers of a reciprocal insurer shall be the equivalent of the policyholders of a mutual insurance company;
  - (d) if a subscribers' advisory committee does not have a president or secretary, the officers of the committee having substantially equivalent duties are the president and secretary of the committee;
  - (e) the commissioner shall approve the articles of merger if the commissioner finds that the merger will promote the general good of the state in conformity with the standards under Subsection 31A-37-301(4);
  - (f) notwithstanding Sections 31A-37-204 and 31A-37-205, the commissioner may permit the formation, without capital and surplus, of a captive insurance company organized as a reciprocal insurer, into which an existing captive insurance company may be merged to facilitate a transaction under this section, if there is no more than one authorized insurance company surviving the merger; and
  - (g) an alien insurer may be a party to a merger authorized under Subsection (1) if:
    - (i) the requirements for the merger between a domestic and a foreign insurer under Chapter 16, Insurance Holding Companies, are applied to the merger; and
    - (ii) the alien insurer is treated as a foreign insurer under Chapter 16, Insurance Holding Companies.
- (5) If the commissioner approves the articles of merger under this section:
- (a) the commissioner shall endorse the commissioner's approval on the articles; and
  - (b) the surviving insurer shall present the name to the Division of Corporations and Commercial Code.
- (6)
- (a) Except as provided in Subsection (6)(b), a conversion authorized under Subsection (1) shall provide for a hearing, of which notice has been given to the insurer, its directors, officers and stockholders, in the case of a stock insurer, or policyholders, in the case of a mutual insurer, all of whom have the right to appear at the hearing.
  - (b) Notwithstanding Subsection (6)(a), the commissioner may waive or modify the requirements for the hearing.
  - (c) If a notice of hearing is required, but no hearing is requested, after notice has been given under Subsection (6)(a), the commissioner may cancel the hearing.